

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-2183**

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LARRY S. HYMAN, as Liquidating Trustee for  
Governmental Risk Insurance Trust,

Plaintiff - Appellant,

versus

CITY OF GASTONIA,

Defendant - Appellee.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Charlotte. Graham C. Mullen, Chief  
District Judge. (CA-04-25-3)

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Submitted: April 27, 2005

Decided: May 23, 2005

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Before WILLIAMS, SHEDD, and DUNCAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Lee S. Haramis, Daniel A. Nicholas, GRAYROBINSON, P.A.,  
Jacksonville, Florida, for Appellant. Josephine H. Hicks, Gary D.  
McCollum, PARKER, POE, ADAMS & BERNSTEIN, L.L.P., Charlotte, North  
Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Larry S. Hyman, Liquidating Trustee for Governmental Risk Insurance Trust, appeals the district court's orders dismissing without prejudice the complaint against the City of Gastonia, North Carolina, alleging breach of contract\* and denying Hyman's motion filed under Fed. R. Civ. P. 59(e). We have reviewed the parties' briefs, the joint appendix, and the materials submitted pursuant to Fed. R. App. P. 28(j), and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Hyman v. City of Gastonia, No. CA-04-25-3 (W.D.N.C. July 1, 2004; Aug. 17, 2004). We deny Hyman's motion to supplement the record and amended motion to supplement the record and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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\*Generally, dismissals without prejudice are not appealable. Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066 (4th Cir. 1993). However, a dismissal without prejudice could be final if no amendment to the complaint could cure the defects in the plaintiff's case. Id. at 1066-67. We find that the district court's order is a final, appealable order because the defects in the complaint--failure to properly serve the City--must be cured by something more than an amendment to the complaint. Id.